

MONTANA LEGISLATIVE HISTORY

Chapter 234 1985

Bill H _____ S 151

Original bill & history ☒ C

H. Committee on Business & Labor

Hearing Date(s) Mar 07 ☒ C

Mar 08 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Mar 08 ☒ C

S. Committee on Labor Employment Relations

Hearing Date(s) Jan 24 ☒ C

Jan 31 ☒ C

_____ ☐ C

_____ ☐ C

Jan 31 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1/24	TABLED IN COMMITTEE		
2/02	TAKEN FROM TABLE		
2/09	TABLED IN COMMITTEE		
2/13	MOTION FAILED TO TAKE FROM COMMITTEE AND PLACE ON 2ND READING	24	26
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY DIED IN COMMITTEE		

SB 150 INTRODUCED BY WATERMAN, ET AL.
REVISE LAW REGARDING PROVISION OF ADOPTION INFORMATION
BY REQUEST OF THE DEPARTMENT OF FAMILY SERVICES

1/16	FISCAL NOTE REQUESTED		
1/16	INTRODUCED		
1/16	FIRST READING		
1/16	REFERRED TO JUDICIARY		
1/19	FISCAL NOTE RECEIVED		
1/19	FISCAL NOTE PRINTED		
1/20	HEARING		
1/20	COMMITTEE REPORT—BILL PASSED		
1/21	2ND READING PASSED	45	1
1/23	3RD READING PASSED	48	1
	TRANSMITTED TO HOUSE		
1/24	FIRST READING		
1/24	REFERRED TO HUMAN SERVICES & AGING		
1/30	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/08	2ND READING CONCURRED	90	9
3/09	3RD READING CONCURRED	90	7
	RETURNED TO SENATE WITH AMENDMENTS		
3/15	2ND READING AMENDMENTS CONCURRED	50	0
3/16	3RD READING AMENDMENTS CONCURRED	48	2
3/22	SIGNED BY PRESIDENT		
3/23	SIGNED BY SPEAKER		
3/23	TRANSMITTED TO GOVERNOR		
3/28	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 275		
	EFFECTIVE DATE: 10/01/95		

SB 151 INTRODUCED BY BARTLETT, ET AL.
REVISE DEFINITIONS OF TEMPORARY SERVICE CONTRACTOR AND
TEMPORARY WORKER

1/16	INTRODUCED		
1/16	FIRST READING		
1/16	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
1/24	HEARING		
2/01	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/02	2ND READING PASSED	50	0
2/03	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/06	FIRST READING		
2/06	REFERRED TO BUSINESS & LABOR		
3/07	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	94	0
3/14	3RD READING CONCURRED	100	0
	RETURNED TO SENATE		
3/17	SIGNED BY PRESIDENT		

3/18 SIGNED BY SPEAKER
 3/20 TRANSMITTED TO GOVERNOR
 3/24 SIGNED BY GOVERNOR
 CHAPTER NUMBER 234
 EFFECTIVE DATE: 10/01/95

SB 152 INTRODUCED BY KEATING

REPEAL RESOURCE INDEMNITY TRUST TAX WHEN RESOURCE
 INDEMNITY TRUST FUND REACHES \$100 MILLION

1/16	FISCAL NOTE REQUESTED		
1/16	INTRODUCED		
1/16	FIRST READING		
1/16	REFERRED TO TAXATION		
1/20	FISCAL NOTE RECEIVED		
1/21	FISCAL NOTE PRINTED		
1/25	HEARING		
1/30	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/31	2ND READING PASSED	28	21
2/01	3RD READING PASSED	26	24
	TRANSMITTED TO HOUSE		
2/02	FIRST READING		
2/02	REFERRED TO TAXATION		
3/01	HEARING		
3/06	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

SB 153 INTRODUCED BY BROOKE

CONFORM CERTAIN DEFINITIONS TO THE FEDERAL SAFE DRINKING
 WATER ACT

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
 SCIENCES

1/16	FISCAL NOTE REQUESTED		
1/16	INTRODUCED		
1/16	FIRST READING		
1/16	REFERRED TO NATURAL RESOURCES		
1/23	HEARING		
1/23	FISCAL NOTE RECEIVED		
1/23	FISCAL NOTE PRINTED		
2/02	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/03	2ND READING PASSED	33	16
2/04	3RD READING PASSED	33	13
	TRANSMITTED TO HOUSE		
2/06	FIRST READING		
2/06	REFERRED TO NATURAL RESOURCES		
3/03	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/29	2ND READING CONCURRED	89	10
3/30	3RD READING CONCURRED	88	9
	RETURNED TO SENATE WITH AMENDMENTS		
4/05	2ND READING AMENDMENTS CONCURRED	50	0
4/06	3RD READING AMENDMENTS CONCURRED	50	0
4/08	SIGNED BY PRESIDENT		
4/10	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 488		
	EFFECTIVE DATE: 10/01/95		

SENATE BILL NO. 151

INTRODUCED BY

Butt *Synch* *HARP* *Benedict*
Em *James* *Hubbard*

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITIONS OF TEMPORARY SERVICE CONTRACTOR AND TEMPORARY WORKER; AND AMENDING SECTION 39-71-116, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

- (a) the investigation, review, and settlement of claims;
- (b) payment of benefits;
- (c) setting of reserves;
- (d) furnishing of services and facilities; and
- (e) ~~utilization~~ use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

- (a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;
- (b) an unmarried child under the age of 18 years;
- (c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;
- (d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

1 (e) a parent who is dependent upon the decedent for support at the time of the injury if a
2 beneficiary, as defined in subsections (3)(a) through (3)(d), does not exist; and

3 (f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the
4 time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections
5 (3)(a) through (3)(e), does not exist.

6 (4) "Casual employment" means employment not in the usual course of trade, business, profession,
7 or occupation of the employer.

8 (5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior
9 to the injury.

10 (6) "Construction industry" means the major group of general contractors and operative builders,
11 heavy construction (other than building construction) contractors, and special trade contractors, listed in
12 major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not
13 include office workers, design professionals, salespersons, estimators, or any other related employment that
14 is not directly involved on a regular basis in the provision of physical labor at a construction or renovation
15 site.

16 (7) "Days" means calendar days, unless otherwise specified.

17 (8) "Department" means the department of labor and industry.

18 (9) "Disability" means a condition in which a worker's ability to engage in gainful employment is
19 diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined
20 with factors, such as the worker's age, education, work history, and other factors that affect the worker's
21 ability to engage in gainful employment. Disability does not mean a purely medical condition.

22 (10) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

23 (11) "Insurer" means an employer bound by compensation plan No. 1, an insurance company
24 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

25 (12) "Invalid" means one who is physically or mentally incapacitated.

26 (13) "Maintenance care" means treatment designed to provide the optimum state of health while
27 minimizing recurrence of the clinical status.

28 (14) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the
29 healing process when further material improvement would not be reasonably expected from primary medical
30 treatment.

1 (15) "Order" means any decision, rule, direction, requirement, or standard of the department or any
2 other determination arrived at or decision made by the department.

3 (16) "Palliative care" means treatment designed to reduce or ease symptoms without curing the
4 underlying cause of the symptoms.

5 (17) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual
6 payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or
7 any length of time during the calendar year, 12 times the average monthly payroll for the current year.
8 However, an estimate may be made by the department for any employer starting in business if average
9 payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund
10 by the department, as the case may actually be, on December 31 of the current year. An employer's payroll
11 must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

12 (18) "Permanent partial disability" means a condition, after a worker has reached maximum medical
13 healing, in which a worker:

14 (a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119;
15 and

16 (b) is able to return to work in some capacity but the physical restriction impairs the worker's
17 ability to work.

18 (19) "Permanent total disability" means a condition resulting from injury, as defined in this chapter,
19 after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect
20 of physically performing regular employment. Regular employment means work on a recurring basis
21 performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of
22 immediate job openings is not a factor to be considered in determining if a worker is permanently totally
23 disabled.

24 (20) The "plant of the employer" includes the place of business of a third person while the employer
25 has access to or control over the place of business for the purpose of carrying on the employer's usual
26 trade, business, or occupation.

27 (21) "Primary medical services" means treatment prescribed by a treating physician, for conditions
28 resulting from the injury, necessary for achieving medical stability.

29 (22) "Public corporation" means the state or any county, municipal corporation, school district, city,
30 city under commission form of government or special charter, town, or village.

1 (23) "Reasonably safe place to work" means that the place of employment has been made as free
2 from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

3 (24) "Reasonably safe tools and appliances" are tools and appliances as are adapted to and are
4 reasonably safe for use for the particular purpose for which they are furnished.

5 (25) "Secondary medical services" means those medical services or appliances considered not
6 medically necessary for medical stability. The services and appliances include but are not limited to spas
7 or hot tubs, work hardening, physical restoration programs and other restoration programs designed to
8 address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or
9 rehabilitation facilities.

10 (26) "Temporary partial disability" means a condition resulting from an injury, as defined in
11 39-71-119, in which a worker, prior to maximum healing:

12 (a) is temporarily unable to return to the position held at the time of injury because of a medically
13 determined physical restriction;

14 (b) returns to work in a modified or alternative employment; and

15 (c) suffers a partial wage loss.

16 (27) "Temporary service contractor" means ~~any~~ a person, firm, association, partnership, or
17 corporation conducting business that ~~employs individuals directly for the purpose of furnishing the services~~
18 ~~of those individuals on a part time or temporary basis to others~~ hires its own employees and assigns them
19 to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce
20 in situations resulting from employee absences, skill shortages, seasonal workloads, and special
21 assignments and projects.

22 (28) "Temporary total disability" means a condition resulting from an injury, as defined in this
23 chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical
24 healing.

25 (29) "Temporary worker" means a worker whose services are furnished to another on a part-time
26 or temporary basis ~~to substitute for a permanent employee on leave or to meet an emergency or short term~~
27 ~~workload~~ to fill a work assignment with a finite ending date to support or supplement a workforce in
28 situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments
29 and projects.

30 (30) "Treating physician" means a person who is primarily responsible for the treatment of a

1 worker's compensable injury and is:

2 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
3 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

4 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

5 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if
6 there is not a physician, as defined in subsection (30)(a), in the area where the physician assistant-certified
7 is located;

8 (d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

9 (e) a dentist licensed by the state of Montana under Title 37, chapter 4.

10 (31) "Year", unless otherwise specified, means calendar year."

11 -END-

SENATE LABOR & EMPLOYMENT RELATIONS

Page 3

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - - - - - REFERRED - - - - - DATE READ

SB0125	KEATING, TOM		EXEMPT PETROLEUM LAND PROFESSIONALS FROM UNEMPLOYMENT AND WORKERS COMP			
	1/13	1/19	PASS AS AMENDED	1/24	VOTE: 8-1	1/25
SB0151	BARTLETT, SUE		REVISE DEFINITIONS OF TEMPORARY SERVICE CONTRACTOR AND TEMPORARY WORKER			
	1/16	1/24	PASS AS AMENDED	1/31	VOTE: 9-0	2/01
SB0155	SWYSGOOD, CHUCK		EXEMPT CERTAIN MOTOR CARRIERS FROM WORK COMP AND UNEMPLOYMENT INSURANCE LAWS			
	1/16	1/31	TABLED ON	02/01	VOTE:	
SB0179	WILSON, WILLIAM		INCREASE MINIMUM WAGE FOR CERTAIN EMPLOYEES TO \$5 AN HOUR			
	1/18	2/07	TABLED ON	02/10	VOTE:	
SB0180	TVEIT, LARRY		REVISE BINDING SCHOOL ARBITRATION LAW			
	1/19	2/02	DO PASS	2/9	VOTE: 6-3	2/09
SB0201	BURNETT, JIM		AUTHORIZE DRUG & ALCOHOL TEST OF EMPLOYEE INVOLVED IN WORK-RELATED ACCIDENT			
	1/19	2/02	DO PASS	2/9	VOTE: 7-2	2/09
SB0238	VAN VALKENBURG, FRED		EXEMPT CERTAIN UNIVERSITY TEMPORARY EMPLOYEES FROM MANDATED STATE BENEFITS			
	1/25	2/07	PASS AS AMENDED	2/9	VOTE: 6-3	2/09
SB0264	GAGE, DELWYN		ESTABLISH THE MONTANA PROFESSIONAL EMPLOYER ORGANIZATIONS LICENSING ACT			
	1/27	2/07	PASS AS AMENDED	2/9	VOTE: 9-0	2/09
SB0348	GROSFIELD, LORENTS		CAP WORK COMP ADMIN ASSESS FOR PLAN 1, CAP INCREASES PLANS 1 & 2, RAISE MIN			
	2/10	2/18	TABLED ON	02/20	VOTE:	
SB0354	FORRESTER, GARY		REGISTRATION OF CONSTRUCTION CONTRACTORS BY DEPARTMENT OF LABOR			
	2/10	2/18	PASS AS AMENDED	2/18	VOTE: 6-3	2/20
SB0374	HARP, JOHN		REVISE CERTAIN LAWS RELATING TO THE STATE FUND			
	2/11	2/16	PASS AS AMENDED	2/18	VOTE: 6-3	2/20
SB0375	BENEDICT, STEVE		REVISE WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS			
	2/11	2/16	DO PASS	2/18	VOTE: 6-3	2/20

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By CHAIRMAN TOM KEATING, on January 24, 1995, at
1:05 P.M.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: Sen. Gary C. Aklestad, Vice Chairman (R)

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 151
Executive Action: HB 31 and SB 125

HEARING ON SB 151

Opening Statement by Sponsor:

SENATOR SUE BARTLETT, SD 27, Helena, stated SB 151 changes the definitions of temporary service contractor and temporary worker in the definition section of the Workers' Compensation Law. The changes are shown on page 4 of the proposed legislation. The rest of the bill is existing law. The impetus for the bill arose from changes or the definitions that were originally entered into the section in 1991. As the temporary service industry tried to work with the definition, they encountered a number of problems, which came to light during interim subcommittee meetings on Workers' Compensation issues.

Proponents' Testimony:

Jim Nye, Temporary Help Service, Helena, spoke in support of SB 151. Mr. Nye described how the definition problem arose from 1991 State Fund legislation, which narrowly defined the temporary help industry. Currently, the lawfulness of many business practices could be questioned. The uninsured employer program became involved because of situations created by inappropriate charge classifications. The incorrect charge classifications, in turn, caused defiant action charges. Mr. Nye presented written testimony (EXHIBIT 1). The uninsured employer program got involved because of situations such as the following: A worker was referred to a client, and the person then worked for the client. Because the definition had not been satisfied, a problem arose. For example, a print-up mission states a person who is a permanent employee can be replaced. Other narrow circumstances and interpretations also apply. Because the temporary worker does not fit the definition of having to have the client be an uninsured employer, a defiance action could be possible. This is true, even if people performing the duties are employees and are fully covered by Workers' Compensation. The definition exists and creates problems. The clarification wordage is necessary. Mr. Nye stated his company worked with Organized Labor, State Fund and State Chamber of Commerce to complete the proposed legislation and to solve the alleged problems.

Lynne Johnson, Manager, Express Personnel, Helena, Montana, representing seven temporary agencies in Montana. Ms. Johnson submitted verbal and written testimony to redefine the temporary worker definition versus the definition of a leasing company. (EXHIBIT 2) Statistical information was also submitted. A temporary worker means "a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a work force in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects." Ms. Johnson questioned the law guidelines and urged support of SB 151

Jim Tutwiler, Montana Chamber of Commerce, Helena, stated support of SB 151. The legislation is important to business and addresses changes in the market place. Business people find hiring is becoming more and more difficult. Talented people are in the labor pool, but the cost of employing people, due to federal, state regulations, are increasing. Businesses, that are concerned with the cost of employing people, find it difficult to meet salaries, let alone raise salaries. Businesses are actively resisting hiring new people. Recent responses to a Chamber questionnaire reported businesses predict positive business growth. Markets will increase. Higher sales are anticipated, but business are not contemplating hiring new employees. The value and importance of well-trained temporary service people in the market place can definitely promote competitive business.

Chuck Hunter, Department of Labor and Industry, Helena, MT, stated agreement with the language, which provides clarity to law. The Department of Labor and Industry is the regulatory agency. The Department worked with Mr. Nye to clarify the proposed legislation.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR AKLESTAD stated concern about the language on page 4, line 20. SENATOR AKLESTAD asked if the wordage will create potential dissention concerning what businesses are in what categories. SENATOR AKLESTAD asked the repercussions of placing a period "." after the words "client work force". SENATOR BARTLETT stated, if the change was made, there would be strong opposition from the Department of Labor and Industry and the State Fund. The concern is about the definition of the Professional Employers Organization (PEO), which is considered a spin off of leasing companies. Legislation concerning PEOs will be heard in the Labor and Employment Relations Committee. The real and legitimate concern is about how to tell the difference between temporary service agencies and leasing companies. Leasing companies have been recently entering Montana. The language on page 20 has been written by representatives of the Temporary Service Industry, the State Fund, and the Department of Labor and Industry.

SENATOR AKLESTAD stated if the business does not fall into the designated categories on line 20, the business may not be a temporary service contractor. SENATOR AKLESTAD expressed concern there may be businesses that do qualify. By the law being specific, there may be more confrontations by businesses, not listed on line 20, who may claim temporary service contractor status. SENATOR BARTLETT replied the definitions of contractor and worker are not exactly synonymous in part, because there are instances where the individual employer has a short term need for an employee. For example, an employer knows someone who can fill a certain need and hires the person directly or from the job service. The definition of a temporary worker was needed to address the cited example. The definition was also needed for those people who will be placed by the temporary service agencies.

SENATOR BARTLETT asked Mr. Nye to address possible confrontations. Mr. Nye stated the most likely issue will be the small business, a typical, sole proprietorship, that occasionally needs a person. But, the need is relatively "forever". This puts a limit on the specific project scenario. The industry would have to give up support to such businesses who need one person, twenty hours a week, forever.

SENATOR VAN VALKENBURG asked Lynne Johnson about employment statistics. Apparently, SENATOR VAN VALKENBURG queried, the Express Personnel Services pays unemployment insurance on the 4,400 employees. How are the rates set for Workers' Compensation and Unemployment Insurance. Is there a fixed temporary service employee rate, or does the rate depend of the job they are doing. Ms. Johnson replied the premium is paid according to the Workers' Comp rate, according to job description. SENATOR VAN VALKENBURG asked if the Express Personnel Services business provide health insurance coverage to their employees. Ms Johnson replied no, but there is a purchase option for medical benefits, but the employee must pay the costs. SENATOR VAN VALKENBURG asked if the respective employees are ever covered by the employer. Ms. Johnson replied no. SENATOR VAN VALKENBURG asked if any of the same employees are covered by collective bargaining organizations. Ms Johnson replied that Express Personnel Services' employees are not covered by unions, but she could not speak for other similar companies.

SENATOR EMERSON inquired about a fictitious "young" company. The new owner does not know if the company will succeed or not, but decides to hire an Express employee. Does this person qualify. Mr. Nye stated he currently has such an employee and if the legislation passes, the business relationship with his company will terminate. Mr. Nye stated that very often new businesses are not in a position to take out health insurance policies, etc. The cost is prohibited.

Informational Testimony:

None.

Closing by Sponsor:

SENATOR SUE BARTLETT stated the definition of "temporary service" needs to include limited liability companies, page 4, line 16. Working out deep seated concerns between the Temporary Service Industry, Labor and Industry and State Fund was a successful undertaking. SENATOR BARTLETT stated is important to read the entire definition. The intent of SB 151 is to clarify that temporary service contractors provide employees to support or supplement their client's work force. SENATOR BARTLETT stated great effort was taken to complete acceptable language. SENATOR BARTLETT urged the committee to support SB 151.

EXECUTIVE ACTION ON HB 31

Motion:

SENATOR VAN VALKENBURG MOVED TO AMEND HB 31.

Written Statement on SB 151**James A. Nys**

My name is Jim Nys, I am the owner of a temporary help service in Helena. I appear today on my own behalf and as a representative of several other temporary operators in Montana.

Over the past two years, the temporary employment industry in Montana has run into a number of problems which are, I believe, unintended consequences of a 1991 change to workers' compensation statutes. If not corrected, I believe the continued existence of the temporary help industry in Montana is threatened.

Based on a review of the legislative committee minutes from 1991 and discussions with officials at both the Department of Labor and State Fund, the intent of the 1991 legislation was to:

- 1) ensure that all employees are covered for workers' compensation
- 2) prevent employers from circumventing experience ratings of benefits policies by transferring current employees to employee leasing firms.

In the committee minutes from 1991, it is clearly stated that the intent of the sponsor was to allow "businesses who furnish temporary employees to other employers to continue to provide the required worker's compensation coverage" (House Labor and Employment Relations Committee Minutes, March 13, 1991, page 3)

The legislature adopted a State Fund proposal that defined a *temporary service contractor* and a *temporary worker*.

39-71-116 (27) defines a **temporary service contractor** as one who employs individuals for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

39-71-116 (29) defines a **temporary worker** as a worker who services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

These definitions become important in the following two sections of the work comp act: 39-71-117 (1)(c)(2) defines a temporary service contractor as the employer of a temporary employee for premium and loss experience purposes.

39-71-117 (1)(c)(3) states that if a person utilizes a worker from an organization other than a temporary services contractor (emphasis added) the person using the worker is the employer for premium and loss experience ratings unless the organization furnishing the services retains control over the worker and the organization furnishing the service covers the employee for work comp purposes.

These definitions, which were adopted without input or review from the affected industry have proven too narrow in that they are being interpreted to prohibit Montana

businesses from utilizing the flexibility that temporary employees provide to businesses in the other 49 states. Based on my research, no other state has restricted the use of temporary employees as Montana currently does. Jan 24, 1998
BILL NO. 58 151

The Department of Labor's Uninsured Employer Program has taken the position that if a client uses temporary workers for seasonal or projects lasting longer than a few months, the client employer is "uninsured" with respect to the assigned temporaries even though the temporaries are my employees and proper workers' compensation insurance premiums are being paid by my firm for the work involved. This policy forces us to turn down longer projects or arbitrarily "cut off" a client's trained worker before project's end. Such arbitrary rules can result in loss of clients who then are mad at us for pulling a critical temporary employee six months into a seven month project. I believe it is important to note that as an industry, temporary service contractors have always covered their employees for workers' compensation purposes. Because the employees are covered, I frankly am hard pressed to see any valid public policy reason to apply such arbitrary rules.

State fund is apparently worried that temporary contractors will allow its services to be used by firms "mod shopping" (i.e., seeking to avoid a high "premium modification factor). State fund is apparently unaware that most temporary services, myself included, have strong risk management programs which would prohibit them from taking on customers with excessive loss ratios.

Senate Bill 151 is the product of meetings between Temporary Industry representatives, the Montana Chamber of Commerce, Department of Labor and State Fund Officials. While the language still puts more restrictions on our industry than does any other state, it clarifies that the use of a temporary by a client for an assignment of specific duration does not create an uninsured employer situation for the client.

I urge your support of this bill and would be happy to answer questions for committee members.

18



EXHIBIT NO. #2
DATE Jan. 24, 1995
BILL NO. SB 151

Senate Bill 151 - Redefining the Definition of a Temporary.

Lynne Johnson, Manager
Express Personnel
Helena, Montana

"Temporary Worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

Facts concerning Express Personnel of Montana:

1. There are seven (7) Express Personnel offices in Montana. The seven (7) Montana cities are Billings, Kalispell, Butte, Helena, Missoula, Bozeman, and Great Falls.
2. In 1994 Express Personnel Employed 4400 Montanans.
3. In 1994 Express Personnel paid out \$6.7 million in salary.
4. In 1994 Express Personnel paid \$182,000 in State taxes.
5. In 1994 Express Personnel paid \$493,000 in Worker's Compensation premiums.

Express Personnel is not a leasing company and have no plans to become one. We are one of Montana's largest employers. We provide businesses with the opportunity and ability to employ Montanans that would otherwise be unable to do so. We provide Montanans with employment opportunities that would otherwise be unemployed. Redefining the definition of a Temporary will protect not only Montanans, but also Montana's Businesses.

DATE January 24, 1995
 SENATE COMMITTEE ON Labor + Employment Relations
 BILLS BEING HEARD TODAY: SB 151

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Jim NYS	Personnel Plus	151	✓	
Lynne Johnson	Express Personnel	151	✓	
KATHY BIGLIARDI	INTERIM PERSONNEL ^{Butte}	151		
Jim Twissell	MITCHAMBER	151	✓	
Mary Butler	State Fund	151		
DENNY ZEILEN	DOLL	151		
MARY C. ALLEN	CWCSI		—	—
Jaqueline Genmark	Am. Ins. Assoc	151	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

**MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By **CHAIRMAN TOM KEATING**, on January 31, 1995, at 1:00 P.M.

ROLL CALL

Members Present:

Sen. Thomas F. Keating, Chairman (R)
Sen. Gary C. Aklestad, Vice Chairman (R)
Sen. Steve Benedict (R)
Sen. Larry L. Baer (R)
Sen. James H. "Jim" Burnett (R)
Sen. C.A. Casey Emerson (R)
Sen. Sue Bartlett (D)
Sen. Fred R. Van Valkenburg (D)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 155
HB 98
SB 110
Executive Action: SB 151
SB 155
SB 80
HB 98

{Tape: One; Side: One}

HEARING ON SB 155

Opening Statement by Sponsor:

SENATOR CHUCK SWYSGOOD, SD 1, Dillon, MT, expressed gratitude to the Labor and Employment Relations Committee for the flexibility in rescheduling SB 155. Senate Bill 155 would exempt a motor carrier vehicle lessor, who is an independent contractor, from the requirements of Unemployment Insurance and Worker's Compensation Laws. **SENATOR SWYSGOOD** requested the committee to table SB 155.

specific; they are not clean cut; and they are subjective to interpretation and opinion. The department, then, has the right to interpret the ABC the way they want to and throw out an independent contractor status. The department can say "you" were the employer and "you" are stuck with the interpretation. If you want to override the interpretation, a lawyer has to be hired, a battle fought, and costs incurred. Either you pay the claim and the double premium or end up in the Supreme Court, fighting over \$150K to \$200K. **SENATOR KEATING** stated he appreciated **SENATOR VAN VALKENBURG'S** request to correct the problem. Amputation is a very severe method of solving a problem, but when the body has gangrene, sometimes amputation would be the only thing to do. So if the "body" is not corrected in some other way, **SENATOR KEATING** suggested the committee pass SB 101 and amputate the "body". A hiatus must be put on employers who are going bare. The individual employee must be made to accept the responsibility and/or the challenge to make sure they are covered in the work place. Montanans should not continue to expect the state to take care of everybody, all the time. State government and the various departments are not equipped to do that. **SENATOR KEATING** stated the ironic part about the testimony is that the opponents who testified in opposition to SB 110 are covered by Workers' Compensation insurance. They are paying a tax on the premiums. They pay for Workers' Comp to finance those who are going bare and those independent contractors who are abusing the situation. The Department does not collect one hundred percent on those claims that they have in their regulatory authority, or are they covered entirely by those claims. A lot of what they do is paid for on assessments against those who are paying for Workers' Comp. Being the good guys, they are also paying an additional assessment to take care of the bad guys. Something has to be done. If the committee can not do something to begin to rectify the situation, **SENATOR KEATING** suggested amputation.

SENATOR AKLESTAD asked opponents to leave addresses so correspondence could be mailed. The response is due by the middle of next week. Executive action will take place on February 7, 1995.

EXECUTIVE ACTION ON SB 151

Motion:

SENATOR SUE BARTLETT MOVED TO AMEND SB 151.

Discussion:

SENATOR SUE BARTLETT presented an amendment to include limited liability companies, a phrase that has become standard language. On page four, line 16, following "partnership" insert "limited liability company". This is for temporary service contractors.

Vote: THE DO PASS MOTION FOR TO AMEND SB 151 PASSED UNANIMOUSLY.

Motion:

SENATOR BARTLETT MOVED SB 151 DO PASS AS AMENDED.

Discussion:

SENATOR BARTLETT stated the bill changes the definitions of temporary service contractor and temporary worker in the definition portion of the Workers' Compensation Act. It is a change that was brought about by problems within the temporary service industry, concerning the old definitions. The State Fund, Department of Labor and Industry, and Temporary Service Contractors reached agreement on the language. The language is workable and preferred to the current language.

Vote:

THE DO PASS AS AMENDED MOTION FOR SB 151 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 155Motion/Vote:

SENATOR BENEDICT MOVED TO TABLE SB 155. THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON 80Motion:

SENATOR BENEDICT MOVED TO AMEND SB 80.

Discussion:

SENATOR BENEDICT stated exemption to SB 80 would make the exemption a small market, radio exemption. By taking out the television stations, the amendment makes the exemption only apply to Second and Third Class cities and towns, those towns under 10,000. SENATOR AKLESTAD asked if the bill would strictly be for radio stations, only. SENATOR BENEDICT agreed. SENATOR VAN VALKENBURG stated that is only radio, by virtue of the fact, there are no television stations in Second and Third Class towns. The amendment does not make some distinction between radio and TV. Eddy McClure state number 4, at the word and, the amendment will strike "concern a radio". SENATOR KEATING asked for the definition of Second Class city. SENATOR BENEDICT stated Second and Third Class cities are: Every city having a population of 10,000 or more, is a city of First Class; every city or town having a population of less than 10,000 and more than 5,000 is a Second Class city; every city having a population of 5,000 or more than 1,000 is a city of third class: and a municipal corporation having a population of less than 1,000 and more than 300 is a town.

MONTANA SENATE
1995 LEGISLATURE
LABOR AND EMPLOYMENT RELATIONS COMMITTEE

ROLL CALL

DATE JAN 31, 1995

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1 of 3
SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1 of 3
DATE Jan 31, 1995
BILL NO.

DATE January 31, 1995

SENATE COMMITTEE ON

BILLS BEING HEARD TODAY: SB 155 HB 98 SB 110

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
DAVE BROWN	Kirby	HB 98	X	
DAVE ROTT	KIRBY	HB 98	X	
BOB Gustafson	KIRBY	HB 98	X	
Dan Fouty	Kirby	HB 98	X	
Mike Davis	Kirby	H. B. 98	X	
CARL HAGER		SB 110		
BLAIN Schaff	KIRBY	HB 98	X	
Richard HERTHNECK	Kirby	HB 98	✓	
Eric J. Ellman	DIRECT SELLING ASSN	HB 98	X	
Jim Myn	Western Staff			
Angeline Denmark	Am. Ins. Assoc	SB 110 SB 155 HB 98		X
Jim John	Express	SB 151		
Brad Griffin	MT Retail Assoc	HB 98	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

HOUSE BUSINESS & LABOR

Page 10

BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE -----
 REREFERRED ----- DATE READ

SB0095	BISHOP, AL		REVISE HEARING AID TRAINEE LICENSURE				
	2/01	2/10	CONCUR	2/10	VOTE: 18-0		2/10
SB0100	BECK, TOM		AUTHORIZE LOCAL GOV LOANS FOR CERTAIN ECONOMIC DEV PROJECTS; AKA MICRON BILL				
	1/17	1/18	CONCUR	1/19	VOTE: 18-0		1/19
SB0125	KEATING, TOM		EXEMPT PETROLEUM LAND PROFESSIONALS FROM UNEMPLOYMENT AND WORKERS COMP				
	1/30	2/07	CONCUR AS AMENDED	2/7	VOTE: 18-0		2/08
SB0151	BARTLETT, SUE		REVISE DEFINITIONS OF TEMPORARY SERVICE CONTRACTOR AND TEMPORARY WORKER				
	2/06	3/07	CONCUR	3/8	VOTE: 18-0		3/08
SB0171	FRANKLIN, EVE		LICENSE PHYSICAL THERAPY ASSISTANTS				
	2/03	2/28	CONCUR AS AMENDED	2/28	VOTE: 18-0		3/01
SB0177	FOSTER, MIKE		REQUIRE CERTAIN INSURERS, CORPS & HMOS TO DISCLOSE MEANING OF CERTAIN TERMS				
	2/15	3/03	CONCUR	3/3	VOTE: 18-0		3/03
SB0187	BROWN, BOB		AUTOMATED REPORTING AND ACCOUNTING FOR VIDEO GAMBLING MACHINES				
	2/22	3/10	CONCUR AS AMENDED	3/15	VOTE: 11-7		3/16
SB0196	GAGE, DELWYN		REPEAL THE MONTANA RATEMAKING ACT				
	1/30	2/07	CONCUR	2/7	VOTE: 18-0		2/08
SB0201	BURNETT, JIM		AUTHORIZE DRUG & ALCOHOL TEST OF EMPLOYEE INVOLVED IN WORK-RELATED ACCIDENT				
	2/15	3/02	CONCUR AS AMENDED	3/7	VOTE: 18-0		3/07
SB0216	BECK, TOM		ESTABLISH CONTINUING EDUCATION REQUIREMENTS FOR CERTAIN INSURANCE PRODUCERS				
	2/15	3/03	CONCUR	3/3	VOTE: 18-0		3/03
SB0224	CHRISTIAENS, CHRIS		REVISE REAL ESTATE BROKER AGENCY LAW & REQUIRE DISCLOSURE OF AGENT OBLIGAT'S				
	2/15	3/08	CONCUR AS AMENDED	3-14	VOTE: 18-0		3/16
	VAN VALKENBURG, FRED		PROHIBIT PARTNER CANCELLING INSURANCE WITHOUT MAJORITY OF PARTNERS CONSENT				

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By CHAIRMAN BRUCE T. SIMON, on March 7, 1995, at
8:00 A.M.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 151, SB 80, SB 392, SB 400,
Executive Action: HB 574, SB 400, SB 80, SB 375, SB 384,
SB 22, SB 242, SB 19, SB 201, SB 38

HEARING ON SB 151Opening Statement by Sponsor:

SEN. SUE BARTLETT, SD 27, Lewis and Clark County stated this bill was an act revising the definitions of temporary service contractor and temporary worker.

Proponents' Testimony:

Jim Nys said he was the owner of a temporary help service in Helena. He also said this bill was a product of meetings between temporary industry representatives, the Montana Chamber of Commerce, Department of Labor and State Fund officials. While the language still puts more restrictions on the industry than does any other state, it clarifies that the use of a temporary employee by a client for an assignment of specific duration does not create an uninsured employer situation for the client.

EXHIBIT 1

David Owen, Montana Chamber of Commerce, said this bill brought clarity to an issue which is growing and becoming more and more complicated. Employment is becoming more complicated. Society is becoming more complex and the inter-relationships which result in economics is more complex. People are looking at different ways to employ people. Business is changing. There is an increased use of temporary help.

Dennis Zieler, Bureau Chief, Employment Relations Division, Department of Labor and Industry, said they did work with the sponsor on the definitions for these terms and the bill provides the clarity needed in the definitions.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

REP. DAVID EWER asked for the distinction between temporary agencies and employment agencies. SEN. BARTLETT said the temporary service contractors place people for short term assignments that have a finite ending date. Professional employer organizations enter into a leasing arrangement lease a set for employees to work for a business for a particular task that lasts a longer period of time. Professional employer organizations, when entering into a co-employment relationship, share the employment of an entire set of employees at a work place.

REP. EWER asked if the workers' compensation laws cover those situations. SEN. BARTLETT said the latter two are types of employment relationships which will be clarified by another bill.

REP. KARL OHS asked if a temporary employee could not be the only employee. SEN. BARTLETT said yes. That came about prior to the Senate hearing because the State Fund had some concern about getting into a leasing arrangement. All temporary workers would not qualify. The State Fund may take the approach that there needs to be other employees before a placement through a temporary service contractor falls within the scope of this definition. Mr. Nys said this type of employment is frequently done. He was not of the understanding the definition would preclude that.

REP. ALVIN ELLIS asked if the same question regarding one employee could again be addressed. Rick Hill, State Fund, said the concern is with respect to a situation where an employer buys a policy, has no employees and hires a temporary employee. That is the place of concern. They might do that to escape the loss experience. They would be escaping the probability of the losses. If there isn't a policy for the employee which might be manipulated for that purpose. The concern is not the enforcement of who must carry workers' compensation insurance to avoid responsibility. REP. ELLIS said if summer help were to be hired the employer could not hire a temporary. Mr. Hill said Worker's Compensation has 2,000 employers who buy insurance policies with the State Fund and report no payroll and eighteen of them had claims last year.

REP. DON LARSON said under this bill will employers need to establish finite working contracts. Mr. Nys said they would.

REP. JON ELLINGSON asked how the State Fund established the premiums for the temporary contractors who are setting people into a wide variety of industries where there might be risk factors. Mr. Hill said the practice has been that these employers will call if there is not an employment classification which is typically used. The State Fund assigns a classification to them. They may take their own modification factor. He stated further that if a temporary service wanted to mis-represent what the employees were doing they could. There have been some instances of that. Employers are audited. REP. ELLINGSON questioned the limitation on who has coverage. He also asked if this question could not be answered that the committee should be informed of the correct answer. Mr. Hill said the reference to a supplemental work force is the term being used to say an employer must have employees as well. The concern of the State Fund is there are three situations which are direct, temporary and employee leasing.

CHAIRMAN SIMON suggested the State Fund check with their staff regarding this issue.

REP. NORM MILLS said if he would need a temporary person he would be precluded from hiring a person because he did not have a staff other than himself all of the time. If that is the case he would not support this bill.

Closing by Sponsor:

The sponsor closed.

HEARING ON SB 80

Opening Statement by Sponsor:

SEN. TOM KEATING, SD 5, Yellowstone County, said this bill was an act exempting from overtime requirements an employee employed as a radio announcer, news editor, or chief engineer.

Proponents' Testimony:

Riley Johnson, Montana Broadcasters Association, said they were trying to rectify a situation which can threaten a small market radio broadcasting station. The issue originally started with the federal Fair Standards Act versus recent Supreme Court decisions on paying overtime to radio people. This law exempts some cities. This law only applies if the city is under 10,000 population.

David Owen, Montana Chamber of Commerce, said the bill was supported in its original concept. These people need this kind of flexibility.

Opponents' Testimony:

Darrell Holzer, AFL-CIO, said they opposed this bill. The proponents of the bill did not demonstrate any significant public benefit which would be derived from passage of this bill.

Questions From Committee Members and Responses:

REP. EWER asked if hours over 40 would qualify for overtime or compensation. Is the comp. time 1-1/2 time. Mr. Johnson said the time is straight time.

REP. LARSON asked how many small market radio stations there were. Mr. Johnson said 44.

Closing by Sponsor:

The sponsor closed.

HEARING ON SB 392

Opening Statement by Sponsor:

SEN. DELWYN GAGE, SD 43, Glacier County, said this bill was an act authorizing the Governor or a designee to participate in the Pacific Northwest Economic Region.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 3-7-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		

Written Statement on SB 151
James A. Nys

My name is Jim Nys, I am the owner of a temporary help service in Helena. I appear today on my own behalf and as a representative of several other temporary operators in Montana.

Over the past two years, the temporary employment industry in Montana has run into a number of problems which are, I believe, unintended consequences of a 1991 change to workers' compensation statutes. If not corrected, I believe the continued existence of the temporary help industry in Montana is threatened.

Based on a review of the legislative committee minutes from 1991 and discussions with officials at both the Department of Labor and State Fund, the intent of the 1991 legislation was to:

- 1) ensure that all employees are covered for workers' compensation
- 2) prevent employers from circumventing experience ratings of benefits policies by transferring current employees to employee leasing firms.

In the committee minutes from 1991, it is clearly stated that the intent of the sponsor was to allow "businesses who furnish temporary employees to other employers to continue to provide the required worker's compensation coverage" (House Labor and Employment Relations Committee Minutes, March 13, 1991, page 3)

The legislature adopted a State Fund proposal that defined a *temporary service contractor* and a *temporary worker*.

39-71-116 (27) defines a **temporary service contractor** as one who employs individuals for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

39-71-116 (29) defines a **temporary worker** as a worker who services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

These definitions become important in the following two sections of the work comp act:

39-71-117 (1)(c)(2) defines a temporary service contractor as the employer of a temporary employee for premium and loss experience purposes.

39-71-117 (1)(c)(3) states that if a person utilizes a worker from an organization other than a temporary services contractor (emphasis added) the person using the worker is the employer for premium and loss experience ratings unless the organization furnishing the services retains control over the worker and the organization furnishing the service covers the employee for work comp purposes.

These definitions, which were adopted without input or review from the affected industry have proven too narrow in that they are being interpreted to prohibit Montana businesses from utilizing the flexibility that temporary employees provide to businesses in the other 49 states. Based on my research, no other state has restricted the use of temporary employees as Montana currently does.

The Department of Labor's Uninsured Employer Program has taken the position that if a client uses temporary workers for seasonal or projects lasting longer than a few months, the client employer is "uninsured" with respect to the assigned temporaries even though the temporaries are my employees and proper workers' compensation insurance premiums are being paid by my firm for the work involved. This policy forces us to turn down longer projects or arbitrarily "cut off" a client's trained worker before project's end. Such arbitrary rules can result in loss of clients who then are mad at us for pulling a critical temporary employee six months into a seven month project. I believe it is important to note that as an industry, temporary service contractors have always covered their employees for workers' compensation purposes. Because the employees are covered, I frankly am hard pressed to see any valid public policy reason to apply such arbitrary rules.

State fund is apparently worried that temporary contractors will allow its services to be used by firms "mod shopping" (i.e., seeking to avoid a high "premium modification factor). State fund is apparently unaware that most temporary services, myself included, have strong risk management programs which would prohibit them from taking on customers with excessive loss ratios.

Senate Bill 151 is the product of meetings between Temporary Industry representatives, the Montana Chamber of Commerce, Department of Labor and State Fund Officials. While the language still puts more restrictions on our industry than does any other state, it clarifies that the use of a temporary by a client for an assignment of specific duration does not create an uninsured employer situation for the client.

I urge your support of this bill and would be happy to answer questions for committee members.

Temperature Control in Commercial Hot Springs

Body Temperature Regulation in Heated Environments

The core human body temperature is maintained at 98-99 degrees Fahrenheit by the brain and circulatory (blood) systems. When the brain senses an increase in temperature, heated blood is shunted away from the internal organs to the body's surface. At the surface, heat is dissipated through the skin to the surrounding environment; this is what happens when we sweat. However, this regulating mechanism is overwhelmed when the body cannot lose its heat to its surroundings. Indeed, when the body is immersed in hot water, heat loss cannot occur and, instead, the body gains heat from the hot water. This heat is transported via the blood back into the body, thus raising the body's core temperature and causing more blood to be shunted away from internal organs back to the skin, where, in turn, it gets heated again-- "vicious cycle".

Adverse Health Effects

This shunting of heated blood not only raises the body's core temperature, but it can burden the heart and diminish blood flow to the brain. When blood flow to the brain decreases, heat stroke can occur; that is, the person becomes unconscious. If heat stroke occurs in a pool, the person can drown. Fatal heat stroke has occurred rapidly in healthy adults NOT drinking alcohol while sitting in hot pools kept at 106 degrees Fahrenheit or higher. Moreover, seizures can occur at temperatures of 106 degrees or higher, and irreversible brain damage generally begins at temperatures of 108 degrees or higher. In addition, one study has demonstrated a high incidence of birth defects when pregnant women are immersed in water at 102 degrees for more than 15 minutes.

These heat effects occur more rapidly in children, people with underlying illness (particularly heart disease or diabetes), and in those drinking alcohol or using medications that affect heat regulation or induce drowsiness.

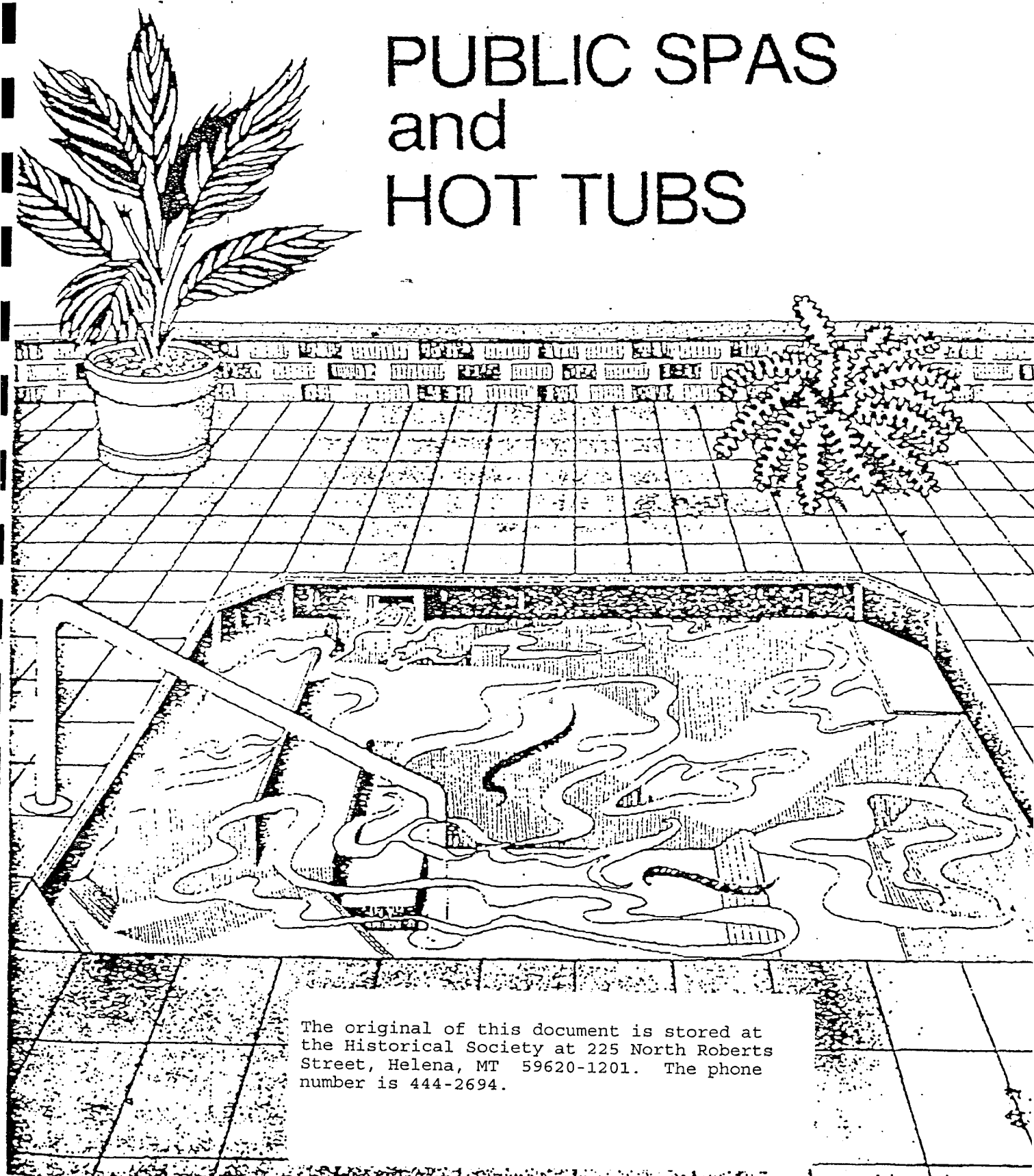
Temperature Standards for Spas and Commercial Hot Springs

Given the above, in hot spas and commercial flow-through hot springs, it is generally recommended that temperatures should not exceed 100-104 degrees. Some experts recommend an upper limit of 100-101 degrees for healthy adults. Moreover, bathing intervals should not exceed 20 minutes in duration. In addition, people should abstain from bathing or consult a physician before bathing if the bather falls into one of the high-risk categories described above.

The Consumer Product Safety Commission (CPSC), The National Spa and Pool Institute, The Centers for Disease Control (CDC), and the Boards of Health of the States of Washington, Oregon, California, Michigan, and Idaho all recommend a maximum temperature of 104 degrees.

Suggested Health and Safety Guidelines for

PUBLIC SPAS and HOT TUBS



The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business

DATE 3-7-90

BILL NO. SB 151

SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	O
Jim NYS	Personnel Plus	✓	
David Owen	mt chamber	✓	
Gaeguiline Denmark	Am. Ins. Assn	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & LABOR

Call to Order: By **CHAIRMAN BRUCE T. SIMON**, on March 8, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Rep. Bruce T. Simon, Chairman (R)
Rep. Norm Mills, Vice Chairman (Majority) (R)
Rep. Robert J. "Bob" Pavlovich, Vice Chairman (Minority) (D)
Rep. Vicki Cocchiarella (D)
Rep. Charles R. Devaney (R)
Rep. Jon Ellingson (D)
Rep. Alvin A. Ellis, Jr. (R)
Rep. David Ewer (D)
Rep. Rose Forbes (R)
Rep. Jack R. Herron (R)
Rep. Bob Keenan (R)
Rep. Don Larson (D)
Rep. Rod Marshall (R)
Rep. Jeanette S. McKee (R)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Carley Tuss (D)
Rep. Joe Barnett (R)

Members Excused: None.

Members Absent: None.

Staff Present: Stephen Maly, Legislative Council
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 335, SB 224, SB 329, SB 233, SB 374
Executive Action: SB 151, HB 554, SB 335, SB 233, SB 329

HEARING ON SB 335

Opening Statement by Sponsor:

SEN. KEN MILLER, SD 11, Yellowstone County, said this bill was an act revising the Montana Retail Installment Sales Act and

EXECUTIVE ACTION ON SB 151Discussion:

REP. SIMON said a letter from the Department of Labor and Industry was received regarding the question of a sole owner who has no employees is a workforce of one. The sole owner would therefore be able to obtain the temporary workers from the temporary service contractor to meet seasonal workloads or temporary needs. The analysis from the State Fund would be the only worker from the majority of a year may hire temporary workers for a finite period. EXHIBIT 10

Motion/Vote: REP. ELLIS MOVED SB 151 BE CONCURRED IN. Motion carried 18-0.

EXECUTIVE ACTION ON HB 554

Motion: REP. OHS MOVED SB 554 DO PASS. REP. OHS MOVED THE OHS AMENDMENTS.

Vote: Motion carried to adopt the Ohs amendment 14-4 with REPS. LARSON, PAVLOVICH, FORBES and KEENAN voting no.

Motion: REP. ELLIS MOVED THE #1 ELLIS AMENDMENTS.

Motion: REP. PAVLOVICH MOVED THE SUBSTITUTE PAVLOVICH AMENDMENT.

Discussion:

REP. MILLS said he opposed the amendment.

REP. ELLIS said he opposed the amendment.

REP. OHS said he opposed the amendment.

REP. COCCHIARELLA said she was supportive of this bill in concept because these breweries should have a way to have people taste their product and then go out in the market and buy it.

CHAIRMAN SIMON said it appears if this type of restriction is put on the bill the bill should be killed.

Vote: A roll call vote was taken which failed 7-11 with REPS. PAVLOVICH, COCCHIARELLA, FORBES, HERRON, KEENAN, LARSON and TUSS voting yes.

Vote: A roll call vote was taken to adopt the original Ellis amendments which carried 11-7 with REPS. SIMON, PAVLOVICH, EWER, KEENAN, LARSON, MARSHALL and TUSS voting no.

Motion: REP. ELLIS MOVED HB 554 DO PASS AS AMENDED.

HOUSE OF REPRESENTATIVES

Business and Labor

ROLL CALL

DATE 3-8-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bruce Simon, Chairman	X		
Rep. Norm Mills, Vice Chairman, Majority	X		
Rep. Bob Pavlovich, Vice Chairman, Minority	X		
Rep. Joe Barnett	X		
Rep. Vicki Cocchiarella	X		
Rep. Charles Devaney	X		
Rep. Jon Ellingson	X		
Rep. Alvin Ellis, Jr.	X		
Rep. David Ewer	X		
Rep. Rose Forbes	X		
Rep. Jack Herron	X		
Rep. Bob Keenan	X		
Rep. Don Larson	X		
Rep. Rod Marshall	X		
Rep. Jeanette McKee	X		
Rep. Karl Ohs	X		
Rep. Paul Sliter	X		
Rep. Carley Tuss	X		



STATE COMPENSATION INSURANCE FUND

5 SOUTH LAST CHANCE GULCH

P.O. BOX 4759

HELENA, MONTANA 59604-4759

Carl W. Swanson, President

Executive (406) 444-6518

General Information (406) 444-6500

March 7, 1995

Representative Bruce Simon
Chairman, House Business and Labor
Committee
State Capitol
Helena, MT 59620

EXHIBIT 10
DATE 3-8-95
HB SB 151

RE: SB 151

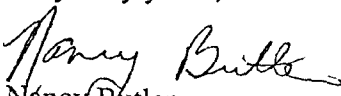
Dear Chairman Simon:

This letter is in response to a question posed the committee in the hearing on SB 151 regarding the definition of temporary service contractors and temporary workers. Specifically, the question was whether a sole proprietor such as a farmer/rancher could hire temporary employees during a two week period to move cattle and treat them for workers' compensation purposes as "temporary workers" under the language of SB 151 regarding "supplementing" the employers work force.

Of course, each case must be viewed by its individual facts. However, we believe that in the above scenario, the farmer/rancher who is otherwise the only worker for a majority of the year may hire temporary workers' for a finite (in this case two weeks) period to meet a short-term work demand caused by employee absences, skill shortages, seasonal workloads, and special assignments and projects. This analysis would be consistent with case law that compares the minimum number of employees the business would generally require to operate (baseline) to the additional employees sought to be treated as "temporary workers". We believe the most significant element of SB 151 is the requirement of time definiteness in the employment of a temporary worker.

We trust this answers your questions, but if you require anything further please let me know.

Very truly yours,


Nancy Butler
General Counsel

SENATE BILL NO. 151

INTRODUCED BY BARTLETT, LYNCH, HARP, BENEDICT, EWER, GRIMES, HIBBARD

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITIONS OF TEMPORARY SERVICE CONTRACTOR AND TEMPORARY WORKER; AND AMENDING SECTION 39-71-116, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) the investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) ~~utilization~~ use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

1 (e) a parent who is dependent upon the decedent for support at the time of the injury if a
2 beneficiary, as defined in subsections (3)(a) through (3)(d), does not exist; and

3 (f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the
4 time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections
5 (3)(a) through (3)(e), does not exist.

6 (4) "Casual employment" means employment not in the usual course of trade, business, profession,
7 or occupation of the employer.

8 (5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior
9 to the injury.

10 (6) "Construction industry" means the major group of general contractors and operative builders,
11 heavy construction (other than building construction) contractors, and special trade contractors, listed in
12 major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not
13 include office workers, design professionals, salespersons, estimators, or any other related employment that
14 is not directly involved on a regular basis in the provision of physical labor at a construction or renovation
15 site.

16 (7) "Days" means calendar days, unless otherwise specified.

17 (8) "Department" means the department of labor and industry.

18 (9) "Disability" means a condition in which a worker's ability to engage in gainful employment is
19 diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined
20 with factors, such as the worker's age, education, work history, and other factors that affect the worker's
21 ability to engage in gainful employment. Disability does not mean a purely medical condition.

22 (10) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

23 (11) "Insurer" means an employer bound by compensation plan No. 1, an insurance company
24 transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

25 (12) "Invalid" means one who is physically or mentally incapacitated.

26 (13) "Maintenance care" means treatment designed to provide the optimum state of health while
27 minimizing recurrence of the clinical status.

28 (14) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the
29 healing process when further material improvement would not be reasonably expected from primary medical
30 treatment.

(15) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(16) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(17) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(18) "Permanent partial disability" means a condition, after a worker has reached maximum medical healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in some capacity but the physical restriction impairs the worker's ability to work.

(19) "Permanent total disability" means a condition resulting from injury, as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(20) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

(21) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

(22) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

1 (23) "Reasonably safe place to work" means that the place of employment has been made as free
2 from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

3 (24) "Reasonably safe tools and appliances" are tools and appliances as are adapted to and are
4 reasonably safe for use for the particular purpose for which they are furnished.

5 (25) "Secondary medical services" means those medical services or appliances considered not
6 medically necessary for medical stability. The services and appliances include but are not limited to spas
7 or hot tubs, work hardening, physical restoration programs and other restoration programs designed to
8 address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or
9 rehabilitation facilities.

10 (26) "Temporary partial disability" means a condition resulting from an injury, as defined in
11 39-71-119, in which a worker, prior to maximum healing:

12 (a) is temporarily unable to return to the position held at the time of injury because of a medically
13 determined physical restriction;

14 (b) returns to work in a modified or alternative employment; and

15 (c) suffers a partial wage loss.

16 (27) "Temporary service contractor" means ~~any~~ a person, firm, association, partnership, LIMITED
17 LIABILITY COMPANY, or corporation conducting business that ~~employs individuals directly for the purpose~~
18 ~~of furnishing the services of these individuals on a part time or temporary basis to others~~ hires its own
19 employees and assigns them to clients to fill a work assignment with a finite ending date to support or
20 supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal
21 workloads, and special assignments and projects.

22 (28) "Temporary total disability" means a condition resulting from an injury, as defined in this
23 chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical
24 healing.

25 (29) "Temporary worker" means a worker whose services are furnished to another on a part-time
26 or temporary basis ~~to substitute for a permanent employee on leave or to meet an emergency or short term~~
27 ~~workload~~ to fill a work assignment with a finite ending date to support or supplement a workforce in
28 situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments
29 and projects.

30 (30) "Treating physician" means a person who is primarily responsible for the treatment of a

1 worker's compensable injury and is:

2 (a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting
3 privileges to practice in one or more hospitals, if any, in the area where the physician is located;

4 (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

5 (c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if
6 there is not a physician, as defined in subsection (30)(a), in the area where the physician assistant-certified
7 is located;

8 (d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

9 (e) a dentist licensed by the state of Montana under Title 37, chapter 4.

10 (31) "Year", unless otherwise specified, means calendar year."

11 -END-